No. 78-1013

In the Supreme Court of the United States

OCTOBER TERM, 1978

PEGGY J. CONNOR, ET AL., PETITIONERS

v.

J. P. COLEMAN, UNITED STATES CIRCUIT JUDGE, ET AL., RESPONDENTS

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS

BRIEF FOR THE UNITED STATES

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CITATIONS

Cases:

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BRIEF FOR THE UNITED STATES

This brief is submitted by the United States in response to petitioners' Motion for Leave to File Petition for a Writ of Mandamus.

OPINION BELOW

Petitioners challenge the district court's decision to delay the entry of a final reapportionment plan. The district court has not entered an order delaying the entry of a final plan in this case, but it indicated at

hearings held on November 29, 1978, and January 2, 1979, that entry of final judgment would be postponed for an unspecified period. The transcripts of these hearings have been lodged with the Court.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1651(a). *Connor* v. *Coleman*, 425 U.S. 675 (1976).

QUESTION PRESENTED

Whether mandamus should issue to compel the district court to enter a final plan for reapportionment of the Mississippi legislature without further delay.

STATUTORY PROVISION INVOLVED

28 U.S.C. 1651(a) provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT

1. This suit was brought by private plaintiffs in October 1965 and involves the reapportionment of the Mississippi legislature. It is before this Court for the sixth time,[1] on plaintiffs' motion for leave to file a petition for a writ of mandamus.

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[1] See *Connor* v. *Johnson*, 402 U.S. 690 (1971); *Connor* v. *Williams*, 404 U.S. 549 (1972); *Connor* v. *Waller*, 421 U.S. 656 (1975); *Connor* v. *Coleman*, 425 U.S. 675 (1976); *Connor* v. *Finch*, 431 U.S. 407 (1977).

The thirteen-year course of this litigation has not yet resulted in a reapportionment plan meeting constitutional standards. Reapportionment plans devised by the state were declared invalid by the district court in 1967 and in 1971 and by this Court in 1975. The district court imposed temporary plans for the 1967, 1971 and 1975 elections that were concededly inadequate due to lack of time and data to prepare a satisfactory plan. This Court reversed the 1976 final judgment of the district court on the ground that the population deviation among districts exceeded constitutional limits. *Connor* v. *Finch*, *supra*.

In the twenty months since this Court's remand in *Connor* v. *Finch*, *supra*, the district court has received proposed plans and modifications from the parties and the Special Master and a hearing has been held on the proposals. The parties reached tentative agreement on a settlement plan but negotiations broke down over the wording of the consent decree. In hearings conducted on November 29, 1978, and January 2, 1979, the district court informed the parties that the entry of a final plan would be delayed pending the conclusion of litigation pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, in the District Court for the District of Columbia concerning the 1978 reapportionment legislation, *State of Mississippi* v. *United States*, Civil No. 78-1425. The court noted that it would act in time so that a new plan would be in place for the August primaries. Special elections were ordered on January 2, 1979, to fill four vacant seats in specially-drawn districts (App. A

and B, *infra*, 1a-7a) and three elections have been held. On January 16, 1979, the court ordered a special election to fill an additional vacancy in the House (App. C, *infra*, 8a-9a). The filing deadline for candidates for the 1979 general elections is June 7, 1979. Such is the posture of the case as it returns to this Court. In the special circumstances, however, it seems appropriate to detail the history of the litigation at length.

2. The Mississippi legislature consists of a 52-member Senate and a 122-member House of Representatives. The private plaintiffs brought this action in October 1965 alleging that the apportionment of the legislature violated the Fourteenth and Fifteenth Amendments. The three-judge court in July 1966 invalidated the 1962 apportionment of the legislature. *Connor* v. *Johnson*, 256 F. Supp. 962. That same year, the legislature enacted a new plan, and on March 3, 1967, the court held that plan unconstitutional and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

In 1971, the State enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, and the district court formulated a plan to govern the 1971 elections. 330 F. Supp. 506. Most of the House districts and almost half of the Senate districts in this plan were constituted as multi-member districts. The court stated that it expected to appoint a Special Master to determine whether sub-

division into single-member districts would be feasible for the 1975 and 1979 elections. *Ibid.*

On plaintiffs' motion, this Court stayed the district court's judgment until June 14, 1971. *Connor* v. *Johnson*, 402 U.S. 690. This Court directed the district court "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts, however, because it found that there were insurmountable difficulties. *Connor* v. *Johnson*, 330 F. Supp. 521 (1971).

After the 1971 elections, this Court considered on direct appeal plaintiffs' challenge to the 1971 court-ordered reapportionment plan. *Connor* v. *Williams*, 404 U.S. 549. Noting with approval that the district court had retained jurisdiction over plans for Hinds, Harrison and Jackson Counties and had stated that a Special Master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551-552. Without disturbing the 1971 elections, this Court vacated the district court's judgment and remanded the case for proceedings consistent with its opinion. *Id.* at 552. The district court

did not appoint a Special Master. *Connor* v. *Coleman*, *supra*, 425 U.S. at 676.

In April 1973 the Mississippi legislature adopted a reapportionment plan. *Connor* v. *Waller*, 396 F. Supp. 1308, 1310. After a hearing in February 1975, the State, in April 1975, adopted new legislation, *id.* at 1311. The district court then dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. *Id.* at 1311. Plaintiffs promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller*, 396 F. Supp. 1308.

On June 5, 1975, this Court reversed that judgment. *Connor* v. *Waller*, 421 U.S. 656. It held that the 1975 legislative acts would not be effective as laws until cleared in accord with Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the district court decision was, however (421 U.S. at 656-657):

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975).

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the bills on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race (75-1184 Pet. 6 n.1).

On June 11, 1975, the United States was permitted to intervene as a party plaintiff in the district court proceedings. In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for election of Senators and Representatives for 1975 * * * election ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (75-1184 Pet. App. 84a-85a). The court stated, however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. When that shall have "been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States" (*id.* at 85a). The court, by orders dated July 8 and 11, 1975, formulated the temporary plan (75-1184 Pet. App. 26a-54a).

The temporary plan was similar to the 1971 court-ordered plan (vacated by this Court so that a permanent plan could be formulated) and to the 1975 legislative plan (objected to by the Attorney General under Section 5).

By order of August 1, 1975, the district court declined to establish a deadline for approval of a final plan (75-1184 Pet. App. 4a-5a). However, the court emphasized "its first determination to have this matter out of the way before February 1, 1976," and its expectation that it would "direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible" (*id.* at 5a).

The United States moved, on January 26, 1976, to establish February 10, 1976, as the date for a hearing on the proposed permanent plan (75-1184 Pet. App. 3a). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court ruled in three then-pending cases[a] (75-1184 Pet. App. 1a-2a).

Plaintiffs sought a writ of mandamus to vacate the district court's stay order and compel the district court to formulate promptly a reapportionment plan and to order necessary special elections to coincide with the November 1976 presidential and congressional elections. Finding no justification for the district court's delaying further a final decision in this case, this Court advised the district court to proceed to trial forthwith, to schedule a hearing within 30 days on all proposed permanent reapportionment plans, so that a permanent plan could be effective for

[a] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144 (1977); *Beer* v. *United States*, 425 U.S. 130 (1976); *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976).

the 1979 elections, and to order any necessary special elections to coincide with the November 1976 elections or "at the earliest practicable date thereafter." *Connor* v. *Coleman*, *supra*, 425 U.S. at 679.

The district court held the required hearing and, on August 24, 1976, announced its decision setting forth the criteria it would apply and reapportioning the Senate (73-934 Pet. App., Vol. III, 94-108). The court reapportioned the House by order of September 8, 1976 (*id.* at 117-137).

The private plaintiffs and the United States thereafter requested special elections. The district court declined to order any special elections for the Senate and ordered special elections in only two House districts (*id.* at 226-229).

This Court reversed the judgment of the district court on May 31, 1977, holding that the court-ordered reapportionment plan failed "to meet the most elemental requirements of the Equal Protection Clause in this area—that legislative districts be 'as nearly of equal population as is practicable.' *Reynolds* v. *Sims*, 377 U.S. 533, 577; *Chapman* v. *Meier*, 420 U.S. 1." *Connor* v. *Finch*, 431 U.S. 407, 410. This Court found that the percentage deviations from population equality of 16.5% in the Senate plan and 19.3% in the House plan exceeded constitutional limits for a court-ordered plan. 431 U.S. at 417. This Court also provided guidance to the district court on the formulation of a plan that would not result in unconstitutional racial dilution, "since the 1979 elections are

on the horizon * * *." 431 U.S. at 422. Noting the irregular shapes of some districts with large black populations this Court instructed the district court to "draw legislative districts that are reasonably contiguous and compact, so as to put to rest suspicions that Negro voting strength is being impermissibly diluted * * *." 431 U.S. at 425-426. This Court recognized that twelve years of litigation had not yet resulted in a constitutional reapportionment plan and remanded the case to the district court with instructions to formulate a final plan "with a compelling awareness of the need for its expeditious accomplishment, so that the citizens of Mississipppi at long last will be enabled to elect a legislature that properly represents them." 431 U.S. at 426.

3. On August 2, 1977, pursuant to the remand in *Connor* v. *Finch, supra,* the district court instructed the parties to file proposed plans. Five proposed plans were filed by the parties: (1) plan of the United States based on voting precincts, filed October 1977, revised February 1978; (2) plan of the United States based on Census enumeration districts, filed October 1977; (3) private plaintiffs' precinct plan, filed October 1977, revised February 1978, revised March 1978; (4) State's plan based on Census enumeration districts, filed October 1977; and (5) State's precinct plan, filed March 1978.

The trial began on November 21, 1977, and was concluded on February 14, 1978.

On April 21, 1978, the Mississippi Legislature enacted a reapportionment plan, signed by the Governor. 1978 Miss. Laws, chs. 515 and 535. The State submitted the statutory plan to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, on June 1, 1978. The Attorney General interposed an objection to the plan on July 31, 1978, after review of the State's submission because he was "unable to conclude that the submitted plans for the Mississippi Senate and House of Representatives do not have the purpose or effect of abridging the right to vote because of race or color" (Pet. App. 27a).

Meanwhile, the Special Master, appointed by the district court in 1975, filed a proposed plan on May 3, 1978, modified on May 9 and 11, 1978. On May 15, 1978, the district court instructed the Special Master to file a final plan and ordered the parties to file comments. The Master's final plan was filed on May 18, 1978, and the Master responded to the comments and made revisions on June 30, 1978.

The district court ordered a settlement conference on June 12, 1978. Settlement negotiations were thereafter conducted during June, July and August, resulting in a settlement plan that was presented by counsel for defendants to the Joint Reapportionment Committee of the Mississippi Legislature. The Joint Reapportionment Committee conducted a poll of the members of the legislature that indicated support for acceptance of the plan if the 1978 statutory plan did not receive clearance under the Voting Rights Act (Transcript of Nov. 29, 1978 hearing at 7-8, 42).

The settlement plan was not then submitted to the district court, however, because the negotiations broke down over the wording of the consent decree on September 5, 1978. Defendants insisted upon a stipulation that the settlement plan could not be introduced as evidence in the declaratory judgment action the State had filed in the District Court for the District of Columbia, a condition to which the United States and private plaintiffs could not agree (Transcript of Nov. 29, 1978 hearing at 34).

On August 1, 1978, the State filed suit in the District Court for the District of Columbia seeking a declaratory judgment that the 1978 acts do not have the purpose and will not have the effect of abridging the right to vote because of race or color. *State of Mississippi* v. *United States, supra.* Trial was held on September 18-27, 1978. Oral argument was held on January 16, 1979. One of the private plaintiffs in *Connor* v. *Finch, supra,* and nine other black Mississippi voters have intervened in the Section 5 litigation.

On August 2, 1978, defendants filed a motion to stay proceedings in *Connor* v. *Finch, supra,* until the conclusion of the Section 5 litigation in the District of Columbia. The United States filed an opposition to this motion on August 21, 1978. Private plaintiffs on October 12, 1978, requested the district court to enter final judgment and order the implementation of the settlement plan.

The district court did not formally rule on these motions but orally indicated at a hearing on Novem-

ber 29, 1978, that on the basis of this Court's opinion in *Wise* v. *Lipscomb,* No. 77-529 (June 22, 1978), "the right-of-way on matters of this kind is given to legislative enactments, that the court should not rush in with a court ordered plan as a general rule when a legislative plan is pending" (Transcript of Nov. 29, 1978 hearing at 3-4). Without specifying the time within which it would act, the district court stated that "if the District of Columbia court * * * should fail to approve the legislative plan, * * * this Court then is going to have to put a court ordered plan into effect with single member districts." *Id.* at 66. The court assured the parties that "[t]he election part is no emergency whatever because it's not going to take place until next August." *Id.* at 65. At a hearing on January 2, 1979, the district court repeated that "purely on the authority of *Wise* v. *Lipscomb,* * * * we've been waiting to see what the District Court in the District of Columbia would do about the legislative plan" (Transcript of Jan. 2, 1979 hearing at 7). The court reiterated its intention that if the District Court for the District of Columbia did not rule "in a timely fashion, why then this Court in plenty of time will put into effect a state court-ordered plan for the elections in August—the primary elections." *Id.* at 52.

The response of the district court to petitioners' motion, filed in this Court on January 17, 1979, indicates that the court will act by May 7, 1979, if no decision has been rendered by then in the Section 5 litigation (Resp. Br. at 5).

The private plaintiffs filed a motion for special elections on November 13, 1978. On January 2, 1979, the district court entered a consent order to hold special elections in two specially-devised Senate districts and one House district in order to fill vacancies (App. A, *infra*, 1a-3a). The district court also decreed a special election in one House district, not agreed to by all parties, to fill another vacancy (App. B, *infra*, 4a-7a). A special election to fill an additional House vacancy was ordered on January 18, 1979 (App. C, *infra*, 8a-9a).

ARGUMENT

The district court's decision to delay entry of a final reapportionment plan is not consistent with the rulings of this Court in *Connor* v. *Coleman*, *supra* and *Connor* v. *Finch*, *supra*. In both decisions this Court expressed its intention that the district court enter a legally valid reapportionment plan for the 1979 election. In *Connor* v. *Coleman*, *supra*, 425 U.S. at 679, this Court instructed the district court to order trial forthwith and to enter final judgment of reapportionment for the 1979 elections and for special elections to coincide with the 1976 presidential elections or the earliest possible date thereafter. In *Connor* v. *Finch*, *supra*, 431 U.S. at 426, the district court was instructed to enter final judgment

> with a compelling awareness of the need for its expeditious accomplishment, so that the citizens of Mississippi at long last will be enabled to elect a legislature that properly represents them.

While the district court embarked upon that responsibility and conducted all proceedings necessary to the

adoption of a final plan, it has stopped short of executing its mandate. Since its failure to act promptly may well result in implementation of a legally defective plan we believe further delay is unwarranted.

If the plan entered by the district court does not meet the standards for court-ordered reapportionment plans, appeal will be necessary to ensure that elections are held under a valid plan. While the district court has assured this Court that it will enter a plan by May 7, that will not provide sufficient time to take an appeal and have a plan in place for the August primaries.[a] One need not prejudge the district court's action. But the history of the case suggests that an appeal might well be warranted.

The district court correctly indicated that its action in entering a final plan would not abridge the right of the State of Mississippi to seek to obtain approval of its legislatively adopted plan under Section 5 of the Voting Rights Act of 1965 (Transcript of Nov. 29, 1978 hearing at 11). Nevertheless, the court declined to take such action in light of this Court's decision in *Wise* v. *Lipscomb*.

The district court apparently regards this Court's decision in *Wise* v. *Lipscomb*, *supra*, as altering its

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[a] Mr. Justice Douglas in a concurring opinion in *Ely* v. *Klahr*, 403 U.S. 108, 122 (1971), involving the reapportionment of the Arizona legislature, reviewed a number of voting cases that had been mooted by elections conducted during the pendency of an appeal and concluded that for this Court to decide such an appeal on the merits by July, the appeal must be filed in February. Even under the expedited schedule in *Connor* v. *Finch*, *supra*, judgment was not had until July 31, 1977, after probable jurisdiction was noted on December 8, 1976.

obligation to enter a final plan forthwith. However, that opinion simply restates the well-recognized principle that the federal courts should not preempt the legislative task of reapportionment and should afford legislatures a reasonable opportunity to act. At the same time, this Court recognized that the "imminence of a state election" may make deference to legislative reapportionment "impractical" and require the imposition of a court-ordered plan. *Wise* v. *Lipscomb*, *supra*, slip op. 4.

The rule of deference, where possible, to legislative reapportionment embodies both a respect for the proper role of federal courts in our federal system and a recognition that state legislatures are better equipped to reconcile the competing interests involved in reapportionment. Thus, where possible, a valid legislative reapportionment plan will supplant a court-ordered plan if available in time for the elections. Moreover, a court should avoid discouraging legislative solutions to problems of apportionment. But immediate action by the district court in this case does not conflict with those principles since the legislature has already acted by adopting a plan on April 21, 1978. Thus, as in *Burns* v. *Richardson*, 384 U.S. 73, 85 (1966), "the question of embarrassment of state legislative deliberations may be put aside." And, as the district court recognized, adoption of a court-ordered plan will not prevent the implementation of a legislative plan if it proves to be valid. Nor is this a case where the legislature has not had a reasonable opportunity to act. The district court has already had to enter temporary plans to govern the 1967, 1971 and 1975 elections.

Indeed, the district court apparently recognized that the legislative plan is not an actual barrier to the entry of final judgment in this case since the court indicated at the hearing held on November 29, 1978, that, had the parties been able to execute a consent decree concerning the settlement plan, the court would have immediately entered final judgment (Transcript of Nov. 29, 1978 hearing at 35), even though Section 5 litigation had already begun by September 1978 when settlement negotiations broke down.

Immediate action would not involve a waste of judicial resources. All parties have filed plans, the Special Master has drafted a plan and made modifications in response to the parties' comments and the district court has been presented with a settlement plan to which all parties tentatively agreed. The district court need only choose one of these plans, which are familiar to all the parties, and enter final judgment requiring implementation of the plan during the 1979 elections. No substantial effort in formulating a new plan is now required of the district court.

The pendency of the action filed by the State in the District Court for the District of Columbia furnishes no justification for the district court in this case to postpone the entry of judgment. If the State should succeed in obtaining a declaratory judgment that the 1978 legislative reapportionment does not violate the Voting Rights Act, the statutory plan would "be

effective as laws." *Connor* v. *Waller*, *supra*, 421 U.S. at 656. But it cannot be assumed that such a result will be obtained in this complex Section 5 litigation, and especially that this result will occur in the near future. Even if the District Court for the District of Columbia renders its decision shortly, the State may take an appeal on the merits to this Court if the declaratory judgment is denied and it is possible that the defendants-intervenors or the United States would appeal if the declaratory judgment is granted to the State. Additional litigation challenging the legislation under the Fourteenth and Fifteenth Amendments would not be foreclosed by a decision favorable to the State under Section 5, 42 U.S.C. 1973c.

While, in the usual case, the district court might be justified in delaying entry of a plan if there were strong reasons to believe that such action would prove unnecessary, that reasoning should not apply here. To delay action which may be necessary to vindicate the right of Mississippi voters on the assumption that the legislative plan is legally valid ignores both the law and the past history of this case. The legislative plan is not "effective as law" unless precleared by the District Court for the District of Columbia. While we do not know what that court will decide, the State has the burden of proving the plan's validity. The last three legislative plans—in 1967, 1971 and 1975 [4] —have not met legal requirements, and the Attorney General has interposed an objection to the plan pres-

[4] The 1973 plan was replaced by the 1975 plan.

ently pending before the District Court for the District of Columbia.

The possible future mootness of a court-ordered plan by the issuance of a declaratory judgment with regard to the statutory plan is no deterrent to action by the district court in this case. Mootness must be judged on the state of the facts in existence at the time a case is ripe for judgment. *Kremens* v. *Bartley*, 431 U.S. 119 (1977). Unpredictable future action by other courts or persons should not defeat the timely and orderly entry of a long-delayed final judgment in this action.

The district court states in its Response that the delay of final judgment is designed to avoid confusion that might arise if a court-ordered plan were later supplanted by the legislative plan (Resp. Br. at 4). If the court's reference is to the electorate, we believe its fear is unwarranted. The entry of a final plan will have little immediate effect on the voters. The record does not establish, and it is far from clear, that the interests of potential candidates are advanced by avoiding confusion at the expense of total ignorance of voting districts. Moreover, the desire to avoid confusion cannot outweigh the potential loss of an opportunity to take an appeal on the merits.

The vindication of the constitutional rights of Mississippi voters, including the plaintiffs, in this "painfully protracted process of litigation," *Connor* v. *Finch*, *supra*, 431 U.S. at 410, should not be postponed on such uncertain grounds.

We urge this Court to adopt the action taken in

Connor v. *Coleman*, *supra*, to grant private plaintiffs' motion for leave to file the petition, but to postpone consideration of the writ of mandamus, with instructions to the district court that further delay is unwarranted and not in accord with the mandate of *Connor* v. *Finch*, *supra*.

CONCLUSION

For the reasons stated, the motion for leave to file a petition for a writ of mandamus should be granted, and the district court should be instructed to adopt a final plan for the reapportionment of the Mississippi legislature without further delay.

Respectfully submitted.

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FEBRUARY 1979

APPENDIX A

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNER, ET AL., PLAINTIFFS
and
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENORS

vs.

CLIFF FINCH, ET AL., DEFENDANTS

CONSENT ORDER

By stipulation and agreement of the parties, it is

ORDERED, ADJUDGED, AND DECREED:

That special elections to fill vacancies in the Mississippi Legislature to be ordered by the Governor of Mississippi shall be ordered in the manner and within the time provided by Mississippi law in the following districts as defined herein:

Senate District	Components	Pop.	Black Pop.	% Black Pop.
6	LOWNDES COUNTY: All except Air Base Precinct	43,077	15,508	36.00
	Deviation from Norm: +1.04%			
15A	HOLMES COUNTY: All			
	MADISON COUNTY: Beat 1 Beat 4 Beat 5			
	YAZOO COUNTY: Beat 4			
	TOTALS DISTRICT 15A	45,726	30,972	67.73
	Deviation from Norm: +7.25%.			
House District				
28	MADISON COUNTY: Beat 1 Beat 4 Beat 5			
	TOTALS DISTRICT 28	19,853	13,351	67.25
	Deviation from Norm: +9.26%			

ORDERED ADJUDGED AND DECREED on this the 2nd day of January, 1979.

/s/ Jas. P. Coleman
JAS. P. COLEMAN
United States Circuit Judge

/s/ Dan M. Russell, Jr.
DAN M. RUSSELL, JR.
United States District Judge

/s/ Harold Cox
HAROLD COX
United States District Judge

AGREED AND STIPULATED TO:

/s/ Frank R. Parker
FRANK R. PARKER
Attorney for the Plaintiffs

/s/ A. F. Summer
A. F. SUMMER
Attorney for Defendants

/s/ Jeremy L. Schwartz
JEREMY L. SCHWARTZ
Attorney for Plaintiff-Intervenor

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNER, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA, INTERVENOR

v.

CLIFF C. FINCH, ET AL., DEFENDANTS

DECREE PROVIDING FOR THE FILLING OF A VACANCY IN THE MISSISSIPPI STATE HOUSE OF REPRESENTATIVES WHICH HAS OCCURRED IN DISTRICT 30

This day this three-judge Court was convened, on adequate notice to the parties, to determine how a vacancy in the Mississippi House of Representatives from District 30 should be filled pursuant to a vacancy being caused by the resignation of Representative George Rogers.

Counsel for all parties were present and appeared in open court and made their representations to the Court as to how this vacancy might be filled.

Having heard these representations and having conferred on the matter

IT IS NOW ORDERED, ADJUDGED AND DECREED that the vacancy in District 30 for the election of representatives in the Mississippi Legislature

occasioned by the resignation of Representative George Rogers shall be filled as follows:

The Supreme Court of the United States having previously adjudicated that this Court may no longer order elections from multiple-member legislative districts in this state, District 30 as established in our prior decree for the election of legislators in the year 1975 shall be divided into three segments which hereafter shall be known as District 30, District 30A, and District 30B, as follows:

District	Components	Unit Pop.	County Pop.	Black Pop.	% Black Pop.
30	Claiborne County: All		10,086	7,522	74.58
	Warren County: Precincts of Redbone, Yokena, Jett & No. 7 Fire Station	8,794	8,794	2,598	29.54
	TOTAL DISTRICT 30 Deviation: +3.90		18,880	10,120	53.60
30A	Warren County: Precincts of Goodrum, Jonestown, Tingle, Beechwood, Culkin, Bovina, Oak Ridge, Redwood, Cedar Grove, King	18,539	18,539	5,298	28.57
	Deviation: +1.44				
30B	Warren County: Precincts of Walters, Brunswick, St. Aloysius, Auditorium, American Legion & Central Fire Station	17,643	17,643	10,459	59.28
	Deviation: —2.9				

Representative Cross, who was elected in 1975, is presently a resident of District 30. Representative Beulow, who was elected in 1975, is presently a representative of District 30A.

Therefore, a special election shall be called as speedily as possible consistent with the requirements of the applicable provisions of the Constitution of Mississippi and the statutes of said state in District 30B for the election of one member of the House of Representatives who shall serve until January 1, 1980.

The Court wishes it distinctly understood that the sole and only purpose of this decree is to fill a vacancy existing in District 30 as established in 1975 and it is not intended to have, nor does it have, any relevance in any state-wide Court ordered legislative plan which this Court may hereafter adopt, if it should become necessary that the Court enter such a plan. Our purpose is to fill a vacancy existing in a district as established in 1975 and in order that the district may have the representation to which it is entitled in the presently sitting session of the Mississippi legislature.

This plan does not meet with the approval of all of the parties to this litigation and is intended by the Court in the discharge of its responsibilities in the premises.

SO ORDERED, ADJUDGED AND DECREED at Jackson, Mississippi on this January 2, 1979.

/s/ Jas. P. Coleman
JAS. P. COLEMAN
United States Circuit Judge

/s/ Dan M. Russell, Jr.
DAN M. RUSSELL, JR.
Chief Judge, United
States District Court

/s/ Harold Cox
HAROLD COX
United States District Judge

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3830(A)

PEGGY J. CONNER, ET AL., PLAINTIFFS
and
UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

vs.

CLIFF FINCH, ET AL., DEFENDANTS

ORDER DIRECTING SPECIAL ELECTION TO FILL A VACANCY IN THE MISSISSIPPI HOUSE OF REPRESENTATIVES

Before COLEMAN, Circuit Judge, RUSSELL, Chief District Judge, and COX, District Judge.

PER CURIAM:

It being made known to the Court that Jimmie Ray McCalla has resigned his seat from District 1B in the Mississippi House of Representatives

IT IS ORDERED, ADJUDGED, and DECREED that said vacancy shall be filled by an election to be held from a District described as follows:

Dist. No.	Components	Population	% Variance	% Black Population
1B	ALCORN COUNTY: All except the Precincts of Glen, Farmington, East Corinth, Rienzi, Biggersville, Bethel, Jacinto, and Union	17,273	−4.94	13.37

The Clerk will provide a certified copy of this Order to Counsel for parties to this litigation and to the Governor of Mississippi, whose function it is to set the date for a special election to fill the vacancy.

A copy of this Order will likewise be furnished the Circuit Clerk of Alcorn County, Mississippi, for the use of the Election Commissioners in said County when the Governor shall have called said special election.

SO ORDERED, ADJUDGED, and DECREED, this the 16 day of January, 1979.

/s/ Jas. P. Coleman
JAS. P. COLEMAN
United States Circuit Judge

/s/ Dan M. Russell, Jr.
DAN M. RUSSELL, JR.
Chief
United States District Judge

/s/ Harold Cox
HAROLD COX
United States District Judge

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